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10/608,491

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EXAMINER

BATES, KEVIN T

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/608,491 | Applicant(s) HANNEL ET AL. | |
| | Examiner Kevin Bates | Art Unit 2456 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-44 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

This Office Action is in response to a communication made on September 23, 2008.

Claims 1-27 have been withdrawn as non-elected claims.

Claims 28 – 44 are pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 36-37, 39-40, 42-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Tuomenoksa (7181542).

Regarding claim 36, Tuomenoksa teaches a method for allowing a computing device to access the capabilities of a network device via a virtual interface comprising:

the second computing device establishing over a first network a communication channel with the computing device (Col. 30, lines 45 – 57);

the second computing device associating a network interface of the network device with the communication channel (Col. 29, lines 57 – 65);

the second computing device receiving over a second network incoming data units directed to the network interface of the network device (Col. 31, lines 14 – 23);

the second computing device forwarding the incoming data units to the computing device via the communication channel (Col. 31, lines 14 – 23).

Regarding claim 39, Tuomenoksa teaches a network testing system (Col. 21, lines 1 – 4) having a processor, a memory, an operating system, and at least one network card, the processor to execute instructions stored in the memory to cause the network testing system to perform operations comprising

the network testing system opening over a first network a communication channel with a computing device (Col. 30, lines 45 – 57)

the network testing system associating a network interface of a network device included in one of the network cards with the communication channel (Col. 29, lines 57 – 65)

the network testing system receiving over a second network incoming data units directed to the network interface of the network device (Col. 31, lines 14 – 23)

the network testing system forwarding the incoming data units to the computing device via the communication channel (Col. 31, lines 14 – 23).

Regarding claims 37 and 40, Tuomenoksa teaches the method of claims 36, and 39, further comprising: receiving via the communication channel outgoing data unit requests from the computing device, the outgoing data unit requests including an identifier of a specified network interface (Column 10, lines 17 – 31); transmitting

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outgoing data units pursuant to the outgoing data unit requests onto the second network via the specified network interface (Column 8, lines 55 – 67).

Regarding claims 38, and 41, Tuomenoksa teaches the method of claims 36, 39, and 42 wherein the establishing the communication channel includes using a transmission control protocol (TCP) socket to create a tunnel (Fig 15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuomenoksa.

Regarding claim 42, Tuomenoksa teaches a machine readable medium having instructions stored thereon which when executed by a processor cause a network card to perform operations comprising

the device establishing a communication channel over a first network with a computing device (Col. 30, lines 45 – 57)

the device associating a network interface of a network device included in the network card with the communication channel (Col. 29, lines 57 – 65)

the device receiving over a second network incoming data units directed to the network interface of the network device (Col. 31, lines 14 – 23)

the device forwarding the incoming data units to the computing device via the communication channel (Col. 31, lines 14 – 23).

Tuomenoksa does not explicitly indicate a network card perform those instructions.

Examiner takes Official Notice (see MPEP § 2144.03) that "a network card can be programmed to perform the functions as described in claim 42, instead of just emulating a network card as disclosed in Tuomenoska (see Col. 15, lines 23 – 29)".

The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the

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Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Regarding claim 43, Tuomenoksa teaches the medium of claim 42, further comprising: receiving via the communication channel outgoing data unit requests from the computing device, the outgoing data unit requests including an identifier of a specified network interface (Column 10, lines 17 – 31); transmitting outgoing data units pursuant to the outgoing data unit requests onto the second network via the specified network interface (Column 8, lines 55 – 67).

Regarding claim 44, Tuomenoksa teaches the medium of claim 42 wherein the establishing the communication channel includes using a transmission control protocol (TCP) socket to create a tunnel (Fig 15).

Claims 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuomenoksa in view of Aysan (7379465), and in further view of Acharya (6894999).

Regarding claims 28 and 32, Tuomenoksa teaches a system comprising:
a first computing device coupled to a first network (Col. 3, lines 41 – 44; the first processor);

a second computing device having a network device included therein, the network device coupled to a second network, the second computing device coupled to the first network (Col. 3, lines 41 – 44, where the second network device is the additional processor; see also Figure 15), the second computing device including

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software which when executed causes the second computing device to perform operations comprising:

accepting a connection request from the first computing device over a communication channel on the first network (Col. 3, lines 44 – 50), the connection request causing the second computing device to wait on the communication channel for additional request from the first computing device;

forwarding to the first computing device via the communication channel incoming data units received by the network device over the second network (Col. 3, lines 44 – 50),

receiving from the first computing device via the communication channel outgoing data unit requests to send outgoing data units onto the second network via the network device (Col. 3, lines 55 – 59).

Toumensoksa does not explicitly indicate that the incoming packets are addressed to the network device as a destination or the outgoing packets requests include packet assembly parameters.

Aysan teaches a system for addressing packets to tunneled connection that includes addressing packets to the public interface at the entry point of the tunnel, which then gets forwarded through the tunnel to the destination (Col. 7, lines 48 - 54; Col. 8, lines 28 - 49).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Aysan's teaching of tunnel addressing in Toumensoksa overcome the problem of too many tunnels sharing actual or virtual addresses.

Acharya teaches that after traveling through tunnels the packets received must be assembled by the egress gateway of the tunnel (Col. 7, lines 32 – 40) and that the formatting must be based on at least some parameters in the packets (Co. 8, lines 11 – 24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Acharya's teaching of formatting and assembly packets traveling through tunnels to overcome any problem of formats of different devices and networks.

Regarding claim 29, Tuomenoksa teaches the system of claim 28 wherein the communication channel is a tunnel (Col. 3, lines 44 – 50; see also Fig. 15).

Regarding claim 30, Tuomenoksa teaches the system of claim 29 wherein the first computing device includes a first tunnel device and the second computing device includes a second tunnel device, the tunnel established between the first tunnel device and the second tunnel device (Fig. 15).

Regarding claim 33, Tuomenoksa teaches the system of claim 32 wherein the first computing device includes a first communication device and the second computing device includes a second communication device, the communication channel established between the first communication device and the second communication device (Col. 3, lines 44 – 50).

Regarding claims 31 and 34, Tuomenoksa teaches the system of claims 30 and 33 wherein the first tunnel device and the second tunnel device are each network interface devices (Fig. 15).

Regarding claim 35, Tuomenoksa teaches the system of claim 32 wherein the first network is an Ethernet network (Col. 11, lines 27 – 44; Col 31, line 49).

Response to Arguments

Applicant's arguments filed September 28, 2008 have been fully considered but they are not persuasive.

The applicant argues that Tuomenoksa does not anticipate the claimed invention because it requires a third processor involved in the connection process. The examiner disagrees, while Tuomenoksa discloses a control system providing management function in help setting up the connection between the gateways, the claimed invention only requires that the second device establishes the connection, receives and forwards incoming and outgoing packets (Col. 6, lines 50 – 61). It is clear from Tuomenoksa that the connection from the first to the second gateway is established, thus it meets the claimed limitation.

Regarding claim 39, the applicant argues that Tuomenoksa does not teach a network testing system as described in the claim. As shown in the mapping to claim 36 and 39, Tuomenoksa teaches a device that performs the functionality required in the claims, the idea that it is not a “network testing device” does not matter since there is no functionality of that device to perform any sort of testing. Network testing device is just a label for the device in the network and constitutes non-functional descriptive language. The applicant needs to positively recite actual testing steps to provide any meaning to the label of the device.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571)272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Bates/
Examiner, Art Unit 2456

/Bunjob Jaroenchonwanit/
Supervisory Patent Examiner, Art Unit 2456